

(16,863.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 650.

THE ARKANSAS BUILDING AND LOAN ASSOCIATION
(PERPETUAL), APPELLANT,

vs.

J. W. MADDEN, SECRETARY OF STATE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF TEXAS.

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1 In the Circuit Court of the United States for the Western District of Texas, at Austin.

ARKANSAS BUILDING & LOAN ASSOCIATION, Complainant, }
 vs.
 J. W. MADDEN, Secretary of State, Respondent. }

In the United States Supreme Court, at Washington.

ARKANSAS BUILDING & LOAN ASSOCIATION, Appellant, }
 vs.
 J. W. MADDEN, Secretary of State, Appellee. }

Caption.

Be it remembered that there was opened and begun to be holden a regular term of the United States circuit court of the fifth circuit and western district of Texas, at Austin, on the 7th day of February, A. D. 1898, it being the first Monday of said month and the day fixed by law for commencing a regular term of said court at said place—present, the Honorable Thomas S. Maxey, United States district judge for the western district of Texas; Duval West, ass't United States attorney for said district; Geo. L. Siebrecht, United States marshal for said district, and D. H. Hart, clerk of said court—when and where the following proceedings, among others, were had, to wit:

2 *Original Bill.*

Filed March 3, 1898.

U. S. Circuit Court in and for the Western District of Texas.

THE ARKANSAS BUILDING & LOAN ASSOCIATION } No. 218,
 vs. } In Equity.
 J. W. MADDEN.

To the honorable judges of said court:

Your orator, The Arkansas Building & Loan Association, Perpetual, sues J. W. Madden (the secretary of state of the State of Texas) and respectfully represents that:

1. Your orator is a corporation duly chartered and organized under and by virtue of the laws of the State of Arkansas; that it is a citizen and resident of said State of Arkansas; that its principal office and domicile is in the city of Little Rock, county of Pulaski, in said State; that the defendant is a citizen of the State of Texas (and a resident of the county of Houston, in the State of Texas) and is and was on the dates herein set out the duly qualified and acting secretary of state of the State of Texas; that defendant is temporarily stopping and is now domiciled in the city of Austin, county of Travis, State of Texas.

2. That your orator is and was at the dates hereinafter mentioned a building and loan association and a corporation and was chartered,
 1—650

as aforesaid, with an authorized capital of, to wit, the sum of two and one-half million dollars; that its assets at present exceed the sum of nine hundred thousand (900,000) dollars; that your orator is now and has been since the 24th day of July, 1896, engaged in interstate commerce and intercourse with the citizens of the State of Texas, in loaning its money made and accumulated in the said State of Arkansas to the citizens of Texas, and accepting real-estate securities therefor.

That on the 24th day of July, 1896, your orator accepted the invitation of the State of Texas, extended to foreign corporations in general, as specified in the act of the 21st legislature of the State of Texas approved April 3rd, 1889, inviting and authorizing foreign corporations to obtain permits to do business in the State of Texas, and on said date, to wit, the 24th day of July, 1896, your orator

filed a copy of its said charter with the secretary of state, who was acting as such officer at said time, and paid the State of Texas, through said officer, the sum of two hundred (\$200) dollars in cash, and procured of the State of Texas on said date a permit to carry on and do business in the State of Texas as a foreign building and loan association, as aforesaid, for and during the period of ten years next after said date, a copy of which permit, marked Exhibit "A," is hereto attached, hereby referred to and made a part of this petition; that thereby your orator acquired vested rights by virtue of said contract to do business in this State, as aforesaid, and became thereby entitled to the equal protection of the laws as all other persons and citizens in Texas are entitled to under the laws of this State and the laws and Constitution of the United States.

That on said 24th day of July, 1896, your orator paid the State of Texas, through its then acting secretary of state, the sum of ten (\$10) dollars as a franchise tax for the year beginning on the 24th day of July, 1896, and ending on the 24th day of July, 1897, thereby complying with the act of the legislature of 1893 of this State imposing said franchise tax of ten (\$10) dollars on all corporations of whatsoever nature, both foreign and domestic, doing business in this State, and the State of Texas, on the said 24th day of July, 1896, issued to your orator a receipt, through its then acting secretary of state, for said franchise tax.

3. That on, to wit, July 17th, 1897, your orator sent by letter a draft of ten (\$10) dollars, drawn by the German National Bank of the City of Little Rock on the National Live Stock Bank of the City of Fort Worth, both being good and solvent banks, and made payable to the order of said J. W. Madden; that said draft or exchange was of the value in the city of Austin of the sum of, to wit, \$10, at said time, to defendant, J. W. Madden, or the State of Texas, as aforesaid, to pay said franchise tax on your orator's company as required by said act of 1893, for the year ending the 24th day of July, 1898.

That on, to wit, July 20th, 1897, the defendant, as secretary of state as aforesaid, received said draft or exchange at Austin, Texas, sent to him as aforesaid, to pay your orator's said franchise tax for

said year, beginning July 24th, 1897, as prescribed by said act of 1893, but that defendant, acting as secretary of state, as aforesaid, willfully refused to accept said sum of ten (\$10) dollars in payment of said franchise tax for said year, as it was his ministerial duty to do under the laws of the State of Texas, and

4 also defendant, acting as secretary of state, as aforesaid, willfully refused to deliver to your orator a franchise tax receipt for the payment of said franchise tax, as aforesaid, as it was his ministerial duty to do as required by the laws of the State of Texas; that defendant in his official capacity on the last-mentioned date, as aforesaid, willfully, wrongfully, and illegally demanded of your orator the exorbitant sum of two hundred and five (\$205.00) dollars in payment of its franchise tax in this State for the year beginning July 24th, 1897, and then and there refused to accept any less sum of money of your orator in payment of its franchise tax.

4. The said defendant in exacting said sum of \$205.00 in payment of said franchise tax for said year was wrongfully endeavoring to enforce a certain act of the legislature of the State of Texas passed by the last legislature entitled "An act to amend articles 5243e, i, j, and k of chapter 9, title 104, of the Revised Civil Statutes, relating to the taxation of insurance, telephone, sleeping and dining car and other corporations, and to provide for forfeiting the charters of domestic corporations, and permits of foreign corporations to do business in this State for failure to pay the franchise tax levied by this act." Said act of the legislature was approved by the governor of this State on May 15th, 1897, and by the emergency clause thereof said act took effect from its passage; that said act does impose said tax of \$205.00 on all foreign corporations which have an authorized capital stock of two and one-half million (\$2,500,000) dollars; that the tax thereby imposed on all domestic corporations is much less than the tax imposed on all foreign corporations of the same authorized capital stock and class; that the tax imposed by said act on domestic corporations with the same authorized capital stock as your orator and of the same class is only \$50 per annum; that said act further provides that "any corporation either domestic or foreign which shall fail to pay the tax provided for in this article at the time specified herein shall because of such failure forfeit its right to do business in this State, which forfeiture shall be consummated without judicial ascertainment by the secretary of state entering upon the margin of the ledger kept in his office, relating to such corporations the word 'Forfeited,' giving the date of such forfeiture, and any corporation whose right to do business may be thus forfeited shall be denied the right to sue or defend in any of the courts of this State, and in any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such defendant corporation

5 * * * ;" that said act grossly discriminates against foreign corporations and in favor of domestic corporations, as aforesaid, and is therefore a species of class legislation, and is therefore not only obnoxious and repugnant to sections 1 and 2 of article VIII of the

constitution of Texas, requiring all taxes of whatsoever nature to be equal and uniform on all persons whether natural or artificial, but is also obnoxious and repugnant to the commerce clause of the Constitution of the United States, as well as to section 1 of the 14th amendment to the Constitution of the United States, which prescribes that no State shall "deny to any person within its jurisdiction the equal protection of the law;" that by reason of the premises said act is null and void as to your orator and all foreign corporations who, like your orator, had prior to said act obtained permits to do business in this State for the period of ten years under the act of April 3, 1889, as authorized by said last-named act.

5. That since your orator procured its said permit to do business in this State it has, in good faith and prior to the passage of said act, loaned the sum of \$51,800.00 to L. J. Weltman, a resident and citizen of Fort Worth, Tarrant county, Texas, and to thirty other residents and citizens of the State of Texas; that your orator now holds non-negotiable notes executed by said thirty-one borrowers, as aforesaid, secured by liens on real estate situated in the State of Texas; that each of said notes bear interest at the rate of ten per cent. per annum, payable monthly to your orator at its said home office, and that each of said borrowers hold stock of the face value of the amount of their respective loans; that said stock is by the terms thereof to be paid for by the said stockholders at the rate of fifteen cents per month on each share of the value of \$25; that by the terms of said loan obligations and said stock, when the said stock becomes worth par by the profits of the corporation and the amount paid thereon, then said loan obligations are to be cancelled. Each of said loan obligations provides that, in case of default in the payment of the stock, dues, or interest on said loan obligations by the said borrowers for the period of three months, then said loan obligations shall, at the option of your orator, mature.

That your orator has sold a great amount of its stock as an investment to many other citizens of the State of Texas besides said borrowers, to be paid for as aforesaid; that all of said citizens
6 purchased and are holding said stock in good faith, relying upon your orator's right to do business and to continue its business in the State of Texas, under and by virtue of its said contract, as aforesaid, procured from the State of Texas.

That your orator is desirous of paying all valid taxes imposed on it by the laws of the State of Texas and is desirous of complying with all the valid laws of the State of Texas and to continue to do business in this State and is ready and willing and hereby tenders into this court the sum of ten (\$10) dollars in payment of its franchise tax for the year beginning July 24th, 1897, and your orator is ready and willing to pay the State of Texas whatever it may owe her for taxes or otherwise now or at any time in the future.

6. That said defendant, claiming to act in his said official capacity, has since the 24th day of July last wrongfully and willfully threatened to declare forfeited your orator's said permit and contract to carry on its business in this State, as aforesaid, under and by virtue and as specified in said act of May 15th, 1897; that said defendant,

on, to wit, the — day of August, 1897, sent your orator a written demand demanding of your orator the said sum of \$205.00 in payment of its franchise tax under said act for said year, and also said written demand contained the penalty prescribed by said act, stating that if said tax was not paid your orator's permit would be forfeited by defendant.

That since said date and recently the defendant has sent your orator two circular letters at its home office, hereto attached and marked Exhibits "B" and "C," therein and thereby exacting said illegal tax of your orator and threatening to forfeit your orator's permit as specified in said act.

That your orator has every reason to believe and does believe by reason of the premises, and therefore charges, that it stands in imminent danger of having its said permit to do business in this State wrongfully declared forfeited by the said defendant, the said secretary of state, immediately under and by virtue of and in accordance with said act of May 15th, 1897.

That said threats of said defendant, if carried into execution by him, will imperil all your orator's said loan obligations in Texas, as aforesaid, and will occasion a multiplicity of suits by and against your orator in endeavoring to enforce and protect its said

7 loans or to defend the same against suits by said borrowers.

As soon as defendant carries into effect his threats, which he will do immediately, without any doubt, if not restrained from so doing, and proclaims to the world that your orator's permit to do business in this State has been forfeited by reason of its failure to pay its said franchise tax, as prescribed by the said illegal act as aforesaid, the said borrowers will necessarily cease to carry out their contracts and will necessarily cease to pay their monthly dues, as aforesaid, on said obligations, because said illegal act provides that when your orator's permit and right to do business in this State has been declared forfeited, as aforesaid, it, your orator, shall have no right whatever to bring suit on any action or for any cause in this State, nor to defend any action brought against it, and thereby all your orator's rights in this State and its demands against said borrowers and its securities for such demands will be imperilled if not wholly destroyed.

That the profits of your orator will necessarily thereby be greatly diminished, and each and all of the stockholders of your orator will sustain great and irreparable loss by reason of the premises, and that your orator will sustain irreparable mischief to its franchises; that your orator's said permit and contract from this State to do business herein will be clouded and made to appear illegal, and that all the capital stock of your orator will be greatly lessened in value, and that it will necessarily compel your orator to suspend its business in this State and finally to cease doing business in this State, and that your orator's good name and business standing by reason of the premises will be brought into disrepute and odium in the State of Arkansas, where all of its assets are and its business is transacted, except that in Texas as aforesaid, and it will sustain irreparable loss in the future sale of its stock and carrying on of its

business, and its franchises will be clouded; that by reason of the premises your orator's injury and damage will be irreparable and incapable of ascertainment and will exceed the sum or amount of \$25,000.00.

That your orator by reason of the premises will sustain irreparable loss and damage; that your orator has no legal remedy to thwart the impending peril or to compensate it for the irreparable damage that would necessarily follow the wrongful acts of the defendants complained of herein by reason of the premises.

Wherefore your orator prays for a writ of injunction to be issued instanter against the defendant, restraining him from the
8 collection of said illegal tax of your orator, as aforesaid, and restraining him from the forfeiture of or declaring forfeited your orator's permit and right to do business in this State for failure to pay said illegal tax exacted as aforesaid; and if your orator be mistaken in the said relief prayed for *ex parte* herein, then your orator prays that a day be designated for hearing the issues contained in this bill, and that the defendant, J. W. Madden (who resides in Houston county, State of Texas, but who is at present an inhabitant of the city of Austin, county of Travis, State of Texas), be cited in terms of the law to appear at said day in this honorable court, and then and there to answer the promises and to stand and to abide by such order and decree as may be made against him by this court; and upon the hearing hereof your orator prays for a restraining order restraining said defendant from the collection of said illegal tax of it and from forfeiting or declaring forfeited your orator's said permit or right to do business in this State, and that upon the final hearing hereof your orator prays that said restraining orders be made perpetual and for an injunction perpetually restraining said defendant from the commission of the illegal acts herein complained of, and that your orator be given all equitable relief, both general and special, to which it may be entitled upon the facts herein stated.

PRUIT & SMITH,
Solicitors for Complainant.

STATE OF ARKANSAS,)
County of Pulaski.)

Before me, the undersigned authority, on this day personally appeared James M. Stewart, secretary and agent of the complainant in the above and foregoing bill, who, having been by me first duly sworn, on his oath says that he has read the foregoing bill and is acquainted with the contents therein, and that the allegations of fact contained in said bill are within knowledge of affiant true in substance and in fact.

JAMES M. STEWART.

Sworn to and subscribed before me by the said James M. Stewart this the 28th day of February, A. D. 1898.

My commission expires July 17th, 1900.

[SEAL.]

ARTHUR CARDWELL,
Notary Public in and for Pulaski Co., Ark.

Endorsed: No. 218. Eq'y. The Arkansas Building and Loan Ass'n vs. J. W. Madden. Bill for injunction. Filed M'ch 3, 1898. D. H. Hart, cl'k, by J. W. Hancock, d'y. Pruitt & Smith, solicitors for plaintiff.

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"EXHIBIT A."

Copy.

No. 1073.

THE STATE OF TEXAS, DEPARTMENT OF STATE.

This is to certify that the Arkansas Building & Loan Association, Perpetual, incorporated under the laws of the — Arkansas for the purpose of the accumulation and loan of money, with an authorized capital stock of \$2,500,000.00, has this day filed in this department a certified copy of its articles of incorporation, in accordance with the requirements of an act of the Twenty-first Legislature of the State of Texas, approved April 3, 1889, and I further certify that said corporation has this day paid \$200.00, the amount of the fee prescribed by said act, and I hereby declare that said corporation, having complied fully with the law, is entitled to, and is hereby granted, the permission to carry on its business in this State, in accordance with the provisions of said act of April 3, 1889, for the term of ten years from the date hereof, in accordance with the purpose herein specified.

Witness my official signature and the seal of State affixed, at the city of Austin, the 24th day of July, A. D. 1896.

(Signed)
[SEAL.]

O. N. BROWN,
Acting Secretary of State.

"EXHIBIT B."

Arkansas Building & Loan Ass'n, Perpetual, Little Rock, Ark., to
the State of Texas, Dr.

For franchise tax \$10 00

Due and payable at this office July 24th, 1897.

(See extract from law below.)

SEC. 5. That each and every private domestic corporation heretofore chartered or that may be hereafter chartered under the laws of this State, and each and every foreign corporation that has received or may hereafter receive a permit to do business under the laws of this State shall pay to the secretary of state, annually, on or before the first day of May, a franchise tax of ten dollars. And such corporation which shall fail to pay the tax provided for in this section shall, because of such failure, forfeit their charter.

SEC. 6. The secretary of state shall, on or before the first day of March of each year, notify all corporations subject to the tax provided in the preceding section, and in thirty days after the first day of May of each year shall publish a list of the charter forfeited for non-compliance with this act. Provided, that any corporation which shall within sixty days after such publication pay the tax and \$5.00 additional thereto shall be relieved from forfeiture of its charter by reason of such failure: Provided further, that this act shall not be construed to repeal any law prescribing fees to be collected by the secretary of state.

SEC. 7. Corporations organized for the purpose of religious worship, or for holding places of burial, not for private profit, or for school purposes, or for purely public charity, are exempted from the tax imposed by this act.

Remit amount of tax by express, express money order, post-office money order, or Austin Bank exchange, payable to J. W. Madden, secretary of state. Receipt acknowledging payment will be promptly mailed.

Very respectfully,

J. W. MADDEN,
Secretary of State.

Endorsed on margin in pencil: Check mailed 7/17/97.

Laws 1893, chap. 102.

10

"EXHIBIT C."

Foreign corporation, Arkansas Building & Loan Ass'n, Perpetual,
Little Rock, Ark., to the State of Texas, Dr.

For franchise tax \$205 00

Due and payable at this office July 24th, 1897.

(See extracts from law below.)

Laws, Regular Session, 1897, chapter 120.

Art. 5243i. Each and every foreign corporation heretofore authorized to do business in this State under the laws of this State shall, on or before the first day of May of each year, and each and every such corporation which shall hereafter be so authorized to do business in this State shall, at the time so authorized, and on or before the first day of May of each year thereafter, pay to the secretary of state the following franchise tax: Every such corporation having an authorized capital stock of twenty-five thousand dollars or less, an annual franchise tax of twenty-five dollars; every such corporation having an authorized capital stock of more than twenty-five thousand dollars and not exceeding one hundred thousand dollars, an annual franchise tax of one hundred dollars; every such corporation having an authorized capital stock of over one hundred thousand dollars, an annual franchise tax of one hundred dollars, and in addition thereto an annual franchise tax of one dollar for every ten thousand dollars of authorized capital stock over and above one hundred thousand dollars and not exceeding one million dollars; and if such authorized capital stock exceeds one million dollars then such corporation shall pay a still further additional tax of one dollar for every one hundred thousand dollars over and above one million dollars. Any corporation, either domestic or foreign, which shall fail to pay the tax provided for in this article at the time specified herein, shall because of such failure, forfeit its right to do business in this State, which forfeiture shall be consummated without judicial ascertainment, by the secretary of state entering upon the margin of the ledger kept in his office relating to such corporations the word "Forfeited," giving the date of such forfeiture, and every corporation whose right to do business may be thus forfeited shall be denied the right to sue or defend in any of the courts of this State, and in any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief may be granted to such defendant corporation, unless its right to do business is revived as provided in article 5243j of this act.

Article 5243j. The secretary of state shall on or before the 1st day of March of each year, notify all private domestic and foreign corporations subject to a franchise tax by any law of this State, by mailing to the post-office named as the principal place of business

of such corporation in its articles of incorporation, or to any other place of business of such corporation, addressed in its corporate name, a written or printed notice that such tax will be due at a date named therein, a record of the date of which mailing must be kept by such officer, and which mailing of such notice and the said record thereof shall constitute legal and sufficient notice for all the purposes of this act; and in thirty days after the 1st day of May of each year, said officer shall publish for ten consecutive days in some daily newspaper published in this State, a list of the corporations whose right to do business in this State has been forfeited for non-compliance with this act; provided, that any corporation which shall within six months after such publication pay the tax and five dollars (\$5) additional thereto, for each month or fractional part of a month which shall elapse after such forfeiture, shall be relieved from the forfeiture of its right to do business by reason of such failure, and when such tax and said penalty are fully paid to the secretary of state it shall be the duty of said officer to revive and reinstate said right to do business by erasing or cancelling the word "Forfeited" from his ledger, and substituting the word "Revived," giving the date of such revival; provided, further, that this chapter shall not be construed to repeal any law prescribing fees to be collected by the secretary of state.

Remit amount of tax by express, express money order, post office money order, or Austin Bank exchange, payable to J. W. Madden, secretary of state. Receipt acknowledging payment will be promptly mailed.

Very respectfully,

J. W. MADDEN,
Secretary of State.

NOTE.—To expedite business please return this notice with remittance.

12

Temporary Restraining Order.

THE ARKANSAS BUILDING & LOAN ASSOCIATION }
vs.
J. W. MADDEN, Secretary of State. }

Upon due consideration of the above and foregoing bill presented by the plaintiff, The Arkansas Building & Loan Association, Perpetual, in said cause, it is ordered that said bill be filed in the United States circuit court in and for the western district of Texas, at the Austin division thereof, and that a temporary restraining order issue instant and be served upon said J. W. Madden, the defendant in said cause, restraining him, the said J. W. Madden, from collecting of said plaintiff the franchise tax imposed upon foreign corporations by an act of the legislature of the State of Texas, approved May 15, 1897, as described in said bill, and from forfeiting or from declaring forfeited said plaintiff's permit or contract to do business in this State, granted to it by the State of Texas in July, 1896.

The restraining order hereby granted shall continue in force until the decision of the motion for preliminary injunction, unless otherwise ordered; and it is further ordered that the motion for injunction prayed for by the plaintiff be set down for hearing at the United States circuit court room, in the city of Austin, Texas, on Tuesday, the 22nd day of the present month, and that the defendant be given immediate notice thereof.

Ordered at chambers this the 3rd day of March, A. D. 1897.

T. S. MAXEY,

U. S. Judge.

Endorsed: 218. Eq. Arkansas Building & Loan Association, Perpetual, vs. J. W. Madden, sec'y of state. Restraining order. Filed March 3rd, 1898. D. H. Hart, cl'k, by J. W. Hancock, d'y.

13

Original Answer.

In the Circuit Court of the United States for the Western District of Texas.

ARKANSAS BUILDING AND LOAN ASSOCIATION }

vs.

J. W. MADDEN, Secretary of State. }

In this case now comes J. W. Madden, secretary of state, respondent herein, and, answering the citation herein served on him to show cause why an injunction in this case should not be granted, says:

1. That for the reasons set up in his demurrer, hereto attached and made a part of this answer, said writ of injunction should not issue and be granted.

2. That for the reasons alleged in said demurrer said temporary writ of injunction heretofore granted should be dissolved.

Wherefore he prays that he may go hence without day and for all relief, both general and special, proper in the premises.

M. M. CRANE, *Att'y Gen.*,

T. A. FULLER,

Att'ys for Respondent.

Endorsed: Arkansas Building & Loan Association vs. J. W. Madden, sec. of state. Respondent's original answer & demurrer. Filed M'ch 22, '98. D. H. Hart, clerk.

Filed March 22nd, A. D. 1898.

In Circuit Court of the United States for the Western Dist. of Texas.

ARKANSAS BUILDING AND LOAN ASSOCIATION }
vs. } In Equity.
J. W. MADDEN, Secretary of State.

The demurrer of J. W. Madden, secretary of state, to the bill of complaint filed against him herein by the Arkansas Building and Loan Association.

This defendant, not confessing or admitting any of the matters and things alleged in said bill of complaint to be true, but still protesting and denying the same, demurs thereto, and for cause of demurrer says:

1. Said bill of complaint shows upon its face that the complainant is not entitled to the relief therein prayed for and states no cause of action against respondent.

2. Said bill of complaint is insufficient to warrant the issuance of a writ of injunction, because the same fails to show irreparable injury, and upon its face discloses that complainant has an adequate remedy at law.

3. Said bill of complaint shows upon its face that the amount demanded by respondent as secretary of state is the true amount due by complainant, and that such demand is made in compliance with a valid existing law of the State of Texas.

M. M. CRANE, *Att'y Gen.*,
T. A. FULLER, *Ass't*,
Att'ys for Respondent.

I hereby certify that in my opinion the foregoing demurrers are well founded in point of law.

T. A. FULLER,
Att'y for Respondent.

I, J. W. Madden, secretary of state, respondent herein, solemnly swear that I am the above-named respondent, and that the above and foregoing demurrer is not interposed for delay.

J. W. MADDEN,
Sec'y of State.

Sworn to and subscribed before me this 21 day of March, A. D. 1898.

[SEAL.]

CHAS. S. MORSE,
Clerk Supreme Court of Texas.

15

Motion to Perpetuate Restraining Order.

Filed March 7th, 1898.

United States Circuit Court for the Western District of Texas, Holding Sessions at Austin.

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| THE ARKANSAS BUILDING & LOAN ASSOCIATION, PERPETUAL, | } No. 218. In Equity. |
| vs. | |
| J. W. MADDEN. | |

1st. Now comes the plaintiff in said cause, by its solicitors, and moves the court to perpetuate the restraining orders granted in said cause at chambers on, to wit, the 3rd day of March, 1898, by reason of the facts set forth and proved in said bill.

2nd. Plaintiff further moves that the defendant be perpetually enjoined from collection of the plaintiff the franchise tax complained of, and from declaring forfeited or forfeiting plaintiff's permit to do business in the State of Texas, by reason of the facts alleged and proved in plaintiff's said bill; and plaintiff further prays for such other and further relief, general and equitable, as it may be entitled to by virtue of the facts in said cause.

PRUIT & SMITH,

Solicitors for Plaintiff, The Arkansas B. & L. Association.

Endorsed: No. 218. Eq. Arkansas B. & L. Ass'n vs. J. W. Madden. Motion to perpetuate injunction. Filed March 7th, 1898. D. H. Hart, cl'k, by J. W. Hancock, d'y. Pruit & Smith, solicitors for pl'ff.

Motion to Dissolve.

Filed March 22nd, 1898.

In Circuit Court of the United States for the Western District of Texas.

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| ARKANSAS BUILDING AND LOAN ASSOCIATION | } |
| vs. | |
| J. W. MADDEN, Secretary of State. | |

Now comes the respondent, J. W. Madden, and moves the court to dissolve the temporary writ of injunction heretofore issued in this cause for the following reasons, to wit:

1. The bill of complaint shows upon its face that the complainant has an adequate remedy at law and is not entitled to the relief therein prayed for.

2. Said bill of complaint shows upon its face that the complainant has tendered the amount of the franchise tax alleged to be due, and that a failure to receive the same by the secretary of state can result in no injury to complainant.

3. Because said bill of complaint states no cause of action against

14 THE ARKANSAS BUILDING AND LOAN ASS'N, PERPETUAL, VS.

this respondent and does not disclose any matters entitling the complainant to the issuance of a writ of injunction.

M. M. CRANE, *Att'y Gen.*,

T. A. FULLER, *Ass't*,

Attorneys for J. W. Madden, Respondent.

Endorsed: Arkansas B'ld'g & Loan Ass'n vs. J. W. Madden, sect. state. Motion to dissolve. Filed M'ch 22, 1898. D. H. Hart, clerk.

Agreement to Submit.

Filed March 22nd, A. D. 1898.

U. S. Circuit Court for the Western District of Texas.

ARKANSAS B'LD'G & LOAN ASSOCIATION }
v.
J. W. MADDEN, Secretary of State. }

In this cause it is hereby agreed and stipulated between the parties that this cause may at this time be submitted to the court upon the bill of complaint and demurrers thereto and final judgment and decree entered thereon.

PRUIT & SMITH,

Solicitors for Plaintiff, Ark. B. & L. Ass'n.

M. M. CRANE,

Att'y Gen. of the State, and

T. A. FULLER, *Assistant,*

Attorneys for Respondent, J. W. Madden, Sec'y State.

Endorsed: Filed M'ch 22, 1898. D. H. Hart, clerk, by J. W. Hancock, d'y.

17

Final Decree.

Entered March 22nd, 1898.

In United States Circuit Court for the Western District of Texas,
at Austin.

ARKANSAS BUILDING AND LOAN ASSOCIATION }
vs. } No. 218. In Equity.
J. W. MADDEN, Secretary of State. }

TUESDAY, March 22nd, 1898.

Now, at this time, came on to be heard the application of the complainant, The Arkansas Building and Loan Association, for a temporary writ of injunction, and the motion of the defendant, J. W. Madden, to dissolve the temporary restraining order heretofore issued, and the court, after hearing the argument of counsel and being fully advised in the premises, considers that the law is for the defendant, and it is therefore ordered and decreed that said restraining order be dissolved and vacated and the writ of injunction prayed for be refused; and then by stipulation of parties this cause came on to be

heard for final determination upon the demurrers of defendant to the bill of complaint, and the court, after full and due hearing and argument of counsel and being fully advised, considers that said demurrers numbers one and three should be sustained, and that number two be overruled. It is therefore ordered and decreed that said demurrers number one and three be, and the same are hereby, sustained, and, the complainant refusing to amend, it is therefore further ordered and decreed that said bill of complaint be, and the same is hereby, dismissed, and that defendant recover of the said complainant, The Arkansas Building and Loan Association, all costs in this behalf incurred, and the above complainant doth appeal from this said order to the Supreme Court of the United States, and it prays that this its appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States; which appeal and prayer is hereby allowed.

T. S. MAXEY, Judge.

Endorsed: No. 218. Equity. Judgment. Entered March 22, 1898.
D. H. Hart, cl'k, by J. W. Hancock, d'y.

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Assignment of Errors Nos. 1, 2, 3, & 4.

Filed April 5th, 1898.

Assignment of Errors.

The Circuit Court of the U. S. for the Western District of Texas,
Holding Sessions at Austin.

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| ARKANSAS BUILDING & LOAN ASSOCIATION, | } | No. 218. Equity. |
| PERPETUAL, | | |
| vs. | | |
| J. W. MADDEN, Secretary of State. | | |

The plaintiff in this cause, through its solicitors, makes the following assignment of errors, which it avers occurred upon the trial and disposition of said cause, to wit:

I.

The court erred in sustaining the defendant's first and third demurrers to plaintiff's bill because the same shows that the act of the legislature of Texas in question imposes a heavier tax on plaintiff, a foreign corporation, who was within the jurisdiction of Texas in fact and of right under and by virtue of a written permit and contract executed to it by the State of Texas prior to said act, than on domestic corporations of the same class, and that said act discriminates against plaintiff and other foreign corporations, and is a species of class legislation and obnoxious and repugnant to section 1st of the 14th amendment to the Constitution of the United States, which prescribes that no State shall "deny to any person within its jurisdiction the equal protection of the law," and therefore said act

is null and void and the defendant should be enjoined from the collection of said illegal tax of plaintiff and from forfeiting plaintiff's said permit to carry on its business in Texas by reason of its failure to pay said illegal tax, as plaintiff would thereby suffer irreparable injury.

II.

The decree of the court is erroneous in sustaining defendant's demurrers to plaintiff's bill and in holding the act in question valid and in denying plaintiff the right prayed for, because the facts show that plaintiff, a foreign corporation, accepted the invitation of the State of Texas extended to foreign corporations in general by an act of the 21st Legislature of the State of Texas, approved April 19 3, 1898, and for and in consideration of the sum of \$200 paid to the State of Texas in good faith procured from the State of Texas a written contract, wherein and whereby it obtained the right to transact its business as a building and loan association within the jurisdiction of Texas for the period of ten years from and after said date and acquired the right to the equal protection of the laws guaranteed to other persons and corporations of the same class not only by the constitution of Texas, but by the Constitution of the United States, and that thereafter the 25th Legislature of the State of Texas, by an act approved May 15th, 1897 (the act in question), imposed a tax on plaintiff much greater than on domestic corporations of the same class; that said last-named act was in contravention of and repugnant to article 1st, section 10, of the national Constitution, which declares that "no State shall pass any law impairing the obligation of contracts," and therefore the same is null and void, and in consequence thereof defendant has no right to collect the tax imposed by said invalid act or to forfeit plaintiff's charter by reason of failure to pay the same.

III.

The court also erred in holding said act to be valid and in denying plaintiff's said injunction against the defendant, as prayed for, as plaintiff would suffer irreparable injury by reason of defendant's wrongful acts in collecting the illegal tax and forfeiting plaintiff's permit to do business in Texas by reason of failure to pay said tax, because said act not only discriminates against plaintiff, a foreign corporation engaged in foreign commerce, but said act is repugnant to the commerce clause of the Constitution of the United States and therefore void.

IV.

The court further erred in its decree sustaining defendant's first and third demurrers to plaintiff's bill and in holding that the act in question was valid and in refusing to enjoin the defendant from collecting the tax imposed by said invalid act of the plaintiff and from forfeiting plaintiff's permit or contract to carry on its business in Texas, as plaintiff would suffer irreparable injury thereby, be-

cause said act in question is repugnant to article VIII, section-1 and 2, of the constitution of Texas, requiring all taxes, of whatsoever nature, to be equal and uniform on all persons, whether natural or artificial.

PRUIT & SMITH,
Solicitors for Plaintiff.

Endorsed: No. 218. Eq. Arkansas B. & L. Ass'n *vs.* J. W. Madden. Plaintiff's assignment of errors. Filed April 5, 1898. D. H. Hart, cl'k, by J. W. Hancock, d'y.

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Fifth Assignment of Error.

Filed April 9th, 1898.

In the U. S. Circuit Court for the Western District of Texas, Holding Sessions at Austin.

THE ARKANSAS BUILDING & LOAN ASSOCIATION

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vs.

J. W. MADDEN, Secretary of State.

} No. 218. In Equity.

Fifth assignment of error.

The court erred in sustaining the validity of the act of the legislature in question approved May 15th, 1897, and in denying the relief prayed for, because said act confers upon the secretary of state, an executive officer of the State, the power to declare the permit of any foreign corporation forfeited in any event by reason of failure to pay the tax in question without notice or judicial trial, and deprives plaintiff of the right to have such facts constituting cause for forfeiture of its permit and right to do business in Texas judicially ascertained according to the laws of the land and of the right to have the question of forfeiture of its permit inquired into and determined by judicial authority, and hence said act is repugnant to the 14th amendment to the national Constitution, which provides that "no State shall deprive any person of life, liberty, or property without due process of law," and therefore said act is void.

PRUIT & SMITH,
Solicitors for Plaintiff.

Endorsed: No. 218. Eq. Ark. B. & L. Ass'n *vs.* J. W. Madden. 5th assignment of error. Filed April 9, 1898. D. H. Hart, cl'k, by J. W. Hancock, d'y.

Appeal Bond.

Filed April 11th, 1898.

The Circuit Court of the U. S. for the Western District of Texas,
Holding Sessions at Austin.

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| ARKANSAS BUILDING & LOAN ASSOCIATION, PERPETUAL, vs. J. W. MADDEN, Secretary of State. | } | No. 218. Equity. |
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21 Whereas in the above numbered and entitled cause, in the U. S. circuit court for the western district of Texas, at Austin, Texas, at a regular term of said court, to wit, on the 22nd day of March, A. D. 1898, said court entered a decree sustaining defendant's demurrers to plaintiff's bill and dismissed plaintiff's said cause of action against the defendant and decreed that the defendant, J. W. Madden, recover of the plaintiff, The Arkansas Building & Loan Association, Perpetual, all costs in said cause incurred; and

Whereas the above-named Arkansas Building & Loan Association, a private corporation, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the U. S. circuit court for the western district of Texas:

Therefore we, the said Arkansas Building & Loan Association, Perpetual, as principal, and Ben J. Tillar and J. M. Logan, as sureties, acknowledge ourselves bound to pay said J. W. Madden, defendant in said cause, the sum of \$500, conditioned that — the said Arkansas Building & Loan Association, Perpetual, shall prosecute said appeal to effect and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and *and* remain in full force and virtue.

THE ARKANSAS BUILDING & LOAN
ASSOCIATION, TERPETUAL,

By its solicitors, PRUIT & SMITH.
BEN J. TILLAR.
J. M. LOGAN.

STATE OF TEXAS, }
County of Tarrant. }

We, Ben J. Tillar and J. M. Logan, after being duly sworn, do each depose and say upon our respective oaths that after paying our just debts and liabilities *that* each of said sureties and affiants are worth over \$1,000 in real estate situated in the city of Fort Worth, in Tarrant county, Texas, which is subject to execution, levy, and sale.

BEN J. TILLAR.
J. M. LOGAN.

Sworn to and subscribed by the said Ben J. Tillar and J. M. Logan before me this the 26th day of March, 1898.

[SEAL.]

JNO. REILY,

Notary Public, Tarrant County, Texas.

Approved this the 7th day of April, A. D. 1898.

(Signed)

T. S. MAXEY, *Judge.*

Endorsed: No. 218. Eq. Ark. B. & L. Ass'n vs. J. W. Madden. Appeal bond. Filed Ap'l 11, 1898. D. H. Hart, cl'k, by J. W. Hancock, d'y.

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Citation.

Filed April 11, 1898.

THE UNITED STATES OF AMERICA, {
Fifth Judicial Circuit. }

The President of the United States to J. W. Madden, secretary of state, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the city of Washington, District of Columbia, within thirty days from the date hereof, pursuant to an appeal prayed for and allowed by the circuit court of the United States for the fifth circuit and western district of Texas, at Austin sessions, on March 22nd, A. D. 1898, in a cause wherein The Arkansas Building and Loan Association, Perpetual, is appellant and J. W. Madden, secretary of state, is respondent, to show cause, if any there be, why the decree rendered against the said Arkansas Building & Loan Association, Perpetual, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

Signed this the seventh day of April, A. D. 1898.

(Signed)

T. S. MAXEY,

United States Judge.

Attest: D. H. HART,

[SEAL.]

*Clerk of the Circuit Court of the United States
for the Western District of Texas.*

Endorsed: No. 218. In equity. The Arkansas Building & Loan Association, Perpetual, appellant, vs. J. W. Madden, secretary of state, respondent. Citation to J. W. Madden, secretary of state. Issued April 7, A. D. 1898. D. H. Hart, clerk. Original. Filed April 11, 1898. D. H. Hart, cl'k, by J. W. Hancock, d'y.

(Also endorsed:) I hereby this the 11 day of April, 1898, accept due personal service of this citation on behalf of J. W. Madden, secretary of state of the State of Texas, appellee. M. M. Crane, att'y gen., solicitor for appellee.

Clerk's Certificate.

THE UNITED STATES OF AMERICA, }
Western District of Texas. }

I, D. H. Hart, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the foregoing twenty-four (24) pages, form No. 1 to No. 22, inclusive, contain a true and correct copy of the proceedings had in cause No. 218, equity, entitled The Arkansas Building & Loan Association, Perpetual, *versus* J. W. Madden, secretary of state, as appears from the files and records of said court now in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Austin, in said district, on this the fifteenth day of April, A. D. 1898.

The Seal of the U. S.
Circuit Court, Western
Dist. Texas, Austin.

D. H. HART,

Clerk of said Circuit Court,

By J. W. HANCOCK, *Deputy.*

Endorsed on cover: Case No. 16,863. W. Texas C. C. U. S. Term No., 650. The Arkansas Building and Loan Association, Perpetual, appellant, *vs.* J. W. Madden, secretary of state. Filed April 29, 1898.

